

Memorandum 72-67

Subject: Study 39.30 - Wage Garnishment and Related Matters

At the last meeting, the Commission considered a staff suggested revision of Section 723.051 (hardship exemption) and asked the staff to clarify the language that would be added to the section.

The staff now proposes that Section 723.051 be revised to read as follows:

(a)

723.051. The portion of his earnings which a judgment debtor proves is essential for the support of himself or his family is exempt from levy under this chapter unless the debt is incurred for personal services rendered by any employee or former employee of the judgment debtor. This standard recognizes that the exemption provided by Section 723.050 should be adequate, except in rare and unusual cases, to provide the amount essential for the support of the judgment debtor or his family. This standard also recognizes that the exemption provided by Section 723.050 may not be adequate, for example, in cases where there are a large number of members of the judgment debtor's family who are dependent upon his earnings for their support. Neither the judgment debtor's accustomed standard of living nor a standard of living "appropriate to his station in life" is the criterion for measuring the debtor's claim for exemption under this section.

(b) If the earnings withholding order is one described in Section 723.030 and the judgment debtor claims the exemption provided by subdivision (a), the court shall make an equitable division of the judgment debtor's earnings and shall make an appropriate order on the claim of exemption.

At the last meeting, it was suggested that a sentence be added to subdivision (b) to provide that, if a hardship exemption is allowed on a claim of exemption from a withholding order for support, no ordinary judgment creditor should be able to have anything withheld from the judgment debtor's earnings. This result could be achieved by adding the following sentence to subdivision (b):

If an exemption is allowed under this subdivision, the employer shall not withhold earnings of the employee pursuant to any other order while the order described in Section 723.030 is in effect and any such other order is ineffective.

The staff believes that this would not be a desirable addition. An earnings withholding order for support remains in effect until modified or terminated by a court. If a claim of exemption is allowed, the modified order will remain in effect until modified or terminated, and there is no procedure whereby an ordinary judgment creditor can obtain a review of the earlier determination on the earnings withholding order for support. even where there are changed circumstances. It would, of course, be possible to provide such a procedure, but the provisions would need to be fairly complex. The staff does not believe that this additional complexity should be introduced into our proposal. It will be a rare case indeed where an ordinary judgment creditor will get anything when an earnings withholding order for support is in effect--even where a hardship exemption has been allowed--because it will be a rare case where less than 25 percent is withheld pursuant to the earnings withholding order for support. And, in those rare cases where less than 25 percent is being withheld on the support order, the statute contains a satisfactory procedure whereby the ordinary judgment creditor can obtain a review of the situation: The ordinary judgment creditor serves his order. If more

than the amount set out in the table is being withheld on the support order, the employer will return the order to the ordinary judgment creditor with a return stating that fact. If less than the amount set out in the table is being withheld on the support order, the judgment debtor can claim the hardship exemption which the ordinary judgment creditor will not contest unless he believes that (1) there are changed circumstances since the prior exemption determination or (2) the prior determination was a fraudulent attempt to defeat his interest in recovering on his judgment.

For these reasons, the staff recommends that Section 723.051 be approved as set out above without the additional sentence.

Respectfully submitted,

John H. DeMouly
Executive Secretary

LAW OFFICES OF
DAHL, HEFNER, STARK, MAROIS & JAMES

FOURTEENTH FLOOR-PLAZA TOWERS
555 CAPITOL MALL
SACRAMENTO, CALIFORNIA 95814

AREA CODE 916
TELEPHONE 444-6620

HUGH S. BRADFORD (1901-1955)
S. W. CROSS (1912-1956)
LOREN S. DAHL
ARCHIE HEFNER
ROBERT N. STARK
THEODORE M. MAROIS, JR.
PAUL C. JAMES
JAMES M. WOODSIDE
JOHN D. BESSEY
C. APTON MOORE III
ROBERT W. BELL
HOWARD J. STAGG IV
RICHARD K. PARK

October 30, 1972

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law -- Stanford University
Stanford, California 94305

Re: S. B. 88

Dear John:

At the last meeting of the Legislative Executive Committee of California Association of Collectors, Inc. I was asked to advise you that the industry in general finds that the present procedure of a continuing levy as was authorized by A. B. 3057 -- 1971 -- seems to be working out satisfactorily for all concerned.

Accordingly, as matters now stand and at this point of time the Association would be opposed to any change whether proposed by legislation in the form of S. B. 88 or otherwise.

With best personal regards.

Very truly yours,



LOREN S. DAHL

LSD:ml

cc: Executive Committee, CAC
Mr. Emil Markowitz
Mr. Vic Stefan